IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

MFA.No. 1479 of 1998(B)

AGAINST THE ORDER DATED 04/05/1998 IN IA 24/98 IN IC.25/1996 of ESI COURT, PALAKKAD

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APPELLANT:

EMPLOYEES STATE INSURANCE CORPORATION
REPRESENTED BY ITS REGIONAL DIRECTOR (KERALA)
PANCHDEEP BHAVAN, NORTH SWARAJ ROUND
TRICHUR.

BY ADV. SRI.TPM.IBRAHIM KHAN

RESPONDENT:

M/S. RAJAGOPAL TEXTILE MILLS (P) LTD.
MULANGUNNATHUKAVU, TRICHUR DISTRICT.

BY ADV. SRI.M.P.ASHOK KUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/01/2001, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T.SANKARAN, J

M.F.A.No.1479 of 1998

Dated this the 11th day of January, 2007

JUDGMENT

In this appeal, the Employees State Insurance Corporation challenges the order dated 25th August, 1997 in I.C.No.25 of 96 passed by the Employees Insurance Court, Palakkad. The respondent herein runs a factory covered under the ESI Act. The ESI Corporation demanded contributions for the period from 1.4.1994 to 31.3.1995 on amounts paid as holiday wages and interim relief. The respondent herein challenged the demand made by the ESI Corporation before the Insurance Court.

2. The Employees Insurance Court held that the interim relief paid to the employees is “wages” within the meaning of Section 2(22) of the Act and that the applicant before the court was liable to pay the contribution amounting to Rs.31,300/- in respect of the period from 1.4.1994 to 31.3.1995 as demanded by the Corporation. However, the Employees Insurance Court held, relying on the Full Bench decision of this court in Employees State Insurance Corporation v. Malabar Cashewnut &

Allied Products (1993(1) LLJ 596) that wages paid for national and festival holidays will not form part of the wages. On that finding, the court below held that the demand made by the ESI Corporation for contribution of Rs.23,191/- on holiday wages for the period from 1.4.1994 to 31.3.1995 is unsustainable. The proceedings initiated by the Corporation to recover that amount were quashed. The E.I. court also held that interest is payable by the applicant. As per order dated 4th May 1998 in I.A. No. 24 of 1998 filed by the ESI Corporation, the E.I. court modified the period during which the respondent herein is liable to pay interest.

3. As per the judgment dated 16th October 2001, the Miscellaneous First Appeal was dismissed. That judgment was reviewed by the order dated 26.10.2006 in R.P.No.626 of 2001 and the appeal was directed to be posted for hearing and disposal afresh.

4. The E.I. court held that holiday wages would form part of the wages only on the basis of the decision reported in 1993 (1) LLJ 596 in Malabar Cashewnut & Allied Products case.

The judgment of the Full Bench was challenged by the Corporation before the Supreme Court. The Supreme Court allowed the appeal by judgment dated 3.12.1997 and it was held thus:

“It is not in dispute that the decision of this Court in Regional Director, Employees State Insurance Corpn. vs. Popular Automobiles & Ors. [(1997) 7 SCC 665] answers the point raised in these appeals. Accordingly, we hold that the wages paid as per the Kerala Industrial Establishments National and Festival Holidays Act, 1958 on holidays to the employees would form part part of 'wages' as per Section 2(22) of the Employees' State Insurance Act, 1948.

The order of the High Court taking a contrary view is set aside. The appeals are allowed. No order as to costs.”

In view of the decision of the Supreme Court reversing the Full Bench decision in E.S.I. Corpn. v. Malabar Cashewnut & Allied Products, the order passed by the E.I. court holding that holiday wages will not form part of wages is liable to be interfered with. The finding rendered by E.I. court in paragraph 28 of the

judgment is set aside and the application filed by the respondent herein, challenging the demand made and the proceedings initiated by the Corporation, is dismissed.

MFA is allowed as above.

K.T.SANKARAN,
JUDGE

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